

Geophonic Networks, Inc.

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The Public Utilities Commission of Ohio
c/o Renee J. Jenkins
Secretary to the Commission
180 East Broad Street – 13th Floor
Columbus, OH 43215

Re: In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Competitive Bid Process to Bid Out Their Retail Electric Load
Case No. 04-1371-EL-ATA

Dear Secretary Jenkins:

We understand that Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) submitted a proposal on September 1, 2004 to The Public Utilities Commission of Ohio (the “Commission”) asking the Commission to approve a competitive bid process (“CBP”) designed to bid out the Companies’ entire retail electric load for the period 2006-2008. Each of the Companies is a subsidiary or controlled affiliate of FirstEnergy Corp. According to the Companies’ proposal to the Commission, the CBP utilizes as a procurement model the basic generation service auction process successfully adopted in New Jersey by the New Jersey Board of Public Utilities starting in 2002.

We further understand that the Commission approved the Companies’ CBP proposal – by orders issued October 6, 2004 and October 19, 2004 – after requiring several modifications and amendments. The auction process contemplated under the CBP proposal is currently scheduled to commence on December 8, 2004.

Geophonic Networks, Inc. (“Geophonic”) holds U.S. Patent No. 6,047,274 (the “‘274 Patent”) and U.S. Patent No. 6,598,029 (the “‘029 Patent”) (both attached). We believe these patents apply to energy auctions such as the first three New Jersey basic generation service (“BGS”) auctions held in February 2002, February 2003, and February 2004, respectively.

The United States Patent & Trademark Office, on January 22, 2004, published (i) U.S. Patent Application Serial No. 10/062,798, as amended (the " '798 Application") and (ii) U.S. Patent Application Serial No. 10/633,937 (the " '937 Application") as the result of Geophonic's requests for early publication made pursuant to 35 U.S.C. § 122(b). We have attached copies of the published '798 Application and the published '937 Application for your reference.

This letter shall serve as notice to the Commission of the publication on January 22, 2004 of both the '798 Application and the '937 Application. Under 35 U.S.C. §154(d) (copy attached), the publication of each Application provides Geophonic with the right, before a patent is issued, to a reasonable royalty from any person who had actual notice of such published Application and who makes, uses, offers for sale or sells in the United States the invention as claimed in such published Application. This right to a reasonable royalty accrues immediately. Geophonic's right to a reasonable royalty under 35 U.S.C. §154(d) assumes that the invention as claimed in the patent (when issued) resulting from such Application is substantially identical to the invention as claimed in the published Application.

If the CBP auction proposal approved by the Commission goes forward as planned on December 8, 2004, we believe that the Commission, FirstEnergy Corp., the Companies, and certain of the other participants in the CBP process may infringe our inventions as claimed in the above-referenced Patents and published Applications. Geophonic is willing to provide a license, at a reasonable royalty rate, to the Commission and/or to FirstEnergy Corp. and/or to any or all of the Companies (or their respective affiliates) for the use of Geophonic's patented energy auction process in Commission-approved CBP auctions.

We look forward to discussing this matter further with the Commission or its representatives.

Very truly yours,



Jack J. Johnson
President

Attachments (5)

cc:

Alan R. Scribner - PUCO Chairman
Ronda Hartman Fergus - Commissioner
Judith A. Jones - Commissioner
Donald L. Mason - Commissioner
Clarence D. Rogers, Jr. - Commissioner
Leila L. Vespoli - FirstEnergy Corp.
James W. Burk - FirstEnergy Service Company

35 U.S.C. 154 Contents and term of patent; provisional rights.

(d) PROVISIONAL RIGHTS.—

(1) **IN GENERAL.**— In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b), or in the case of an international application filed under the treaty defined in section 351(a) designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

(A) (i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

(B) had actual notice of the published patent application and, in a case in which the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, had a translation of the international application into the English language.

(2) **RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.**— The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

(3) **TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.**— The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).